

# **Child Welfare: The Child and Family Services Improvement and Innovation Act (P.L. 112-34)**

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## Summary

The Child and Family Services Improvement and Innovation Act (P.L. 112-34) extends funding authorization for the Stephanie Tubbs Jones Child Welfare Services Program and the Promoting Safe and Stable Families Program for five years (FY2012-FY2016). The programs are authorized under Title IV-B of the Social Security Act and received combined funding of \$709 million in FY2011. They both had funding authorizations that, absent legislative action, would have expired on September 30, 2011. Further, P.L. 112-34 renews authority for the U.S. Department of Health and Human Services (HHS) to grant approval for up to 10 child welfare demonstration projects (a.k.a., “waiver” projects) in each of three years (FY2012-FY2014). The authority of HHS to approve new child welfare waiver projects expired on March 31, 2006.

Substantively identical versions of the Child and Family Service Improvement and Innovation Act were introduced on September 12, 2011, in the House and the Senate. The House bill (H.R. 2883) was introduced by Representative Geoff Davis, with Representative Lloyd Doggett, and the Senate bill (S. 1542) was introduced by Senator Max Baucus with Senator Orrin Hatch. Some of the provisions in the Child and Family Services Improvement and Innovation Act were previously included in other bills introduced or acted on in the 112<sup>th</sup> Congress (including H.R. 2790, H.R. 1194, S. 1234, and S. 1013).

On September 14, 2011, the House Ways and Means Committee held a markup of H.R. 2883 and unanimously agreed to report the bill favorably (and without substantive changes) to the full House. The committee reported the bill (H.Rept. 112-210) on September 19, 2011. One day later, September 20, 2011, the Senate Finance Committee held a markup of S. 1542 and unanimously agreed to favorably report S. 1542 (without amendment) to the full Senate.

On September 21, 2011, the full House passed H.R. 2883 under suspension of the rules (with a recorded vote of 395-25). On September 22, 2011, the full Senate passed H.R. 2883 by unanimous consent. The President signed the bill into law on September 30, 2011.

This report describes provisions in the Child and Family Services Improvement and Innovation Act (P.L. 112-34).

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## Introduction

Title I of the Child and Family Services Improvement and Innovation Act (P.L. 112-34) extends funding authorization for five years (FY2012-FY2016) for certain programs that support child welfare-related child and family services (under Title IV-B of the Social Security Act). The funding authorization for those programs had been set to expire with FY2011 (i.e., on September 30, 2011). The measure also makes certain child welfare policy changes to those programs and to the Foster Care and Adoption Assistance program (under Title IV-E of the Social Security Act). The policy changes included for programs under both Title IV-B and Title IV-E of the Social Security Act are primarily related to serving children who are in foster care and their families. Title II of P.L. 112-34 renews the authority for the U.S. Department of Health and Human Services (HHS) to annually approve up to 10 child welfare demonstration projects for each of three years (FY2012-FY2014). In addition, it adds a number of policy changes related to state eligibility to conduct child welfare demonstration projects (often called “waiver” projects) and HHS approval of those projects. Authority for HHS to grant new waivers expired on March 31, 2006.

Substantively identical versions of the Child and Family Services Improvement and Innovation Act were introduced in the House (H.R. 2883) by Representative Geoff Davis, with Representative Lloyd Doggett, and introduced in the Senate (S. 1542) by Senator Max Baucus, with Senator Orrin Hatch, on the same day, September 12, 2011. After those bills were each favorably reported (and without substantive amendment) by the House Ways and Means Committee (H.R. 2883) and the Senate Finance Committee (S. 1542), the House passed H.R. 2883 on September 21, 2011, and the Senate did the same on September 22. President Barack Obama signed the bill into law on September 30, 2011 (P.L. 112-34).

## Title I: Extension of and Amendments to Child Welfare-Related Child and Family Services Programs

Title IV-B of the Social Security Act authorizes a range of programs and activities to support child welfare-related child and family services and research. These include the Stephanie Tubbs Jones Child Welfare Services Program (Subpart 1, hereafter Child Welfare Services program), the Promoting Safe and Stable Families Program (Subpart 2), the National Random Sample Study of Child Welfare (Section 429), and the Mentoring Children of Prisoners Program (Section 439). The funding authorization for each of these programs was set to expire as of September 30, 2011.<sup>1</sup>

The Child and Family Services Improvement and Innovation Act makes the following changes to Title IV-B of the Social Security Act:

- It extends the annual discretionary funding authorization for the Child Welfare Services program at its current law level for five years (\$325 million for each of FY2012-FY2016).<sup>2</sup>

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<sup>1</sup> For more information, see CRS Report R41860, *Child Welfare: Funding for Child and Family Services Authorized Under Title IV-B of the Social Security Act*, by Emilie Stoltzfus.

<sup>2</sup> The Child Welfare Services program has been authorized to receive this level of funding in every year beginning with FY1990. However, the program has never received more than \$295 million in a single year (appropriated for FY1994),

- It provides annual mandatory funding authorization for the Promoting Safe and Stable Families Program for five years (FY2012-FY2016) at \$345 million;<sup>3</sup> and it extends the discretionary funding authorization for that program at the current law level for those same five years (\$200 million for each of FY2012-FY2016).
- It continues for each of five years (FY2012-FY2016) a reservation of mandatory Promoting Safe and Stable program funds for the Court Improvement Program (\$30 million); grants to regional partnerships to assist children affected by parental substance abuse (\$20 million); and grants to states related to monthly caseworker visits (\$20 million).

## **Title IV-B Activities Not Extended**

P.L. 112-34 does not extend program or funding authorization for the Mentoring Children of Prisoners Program, which was first authorized by the Promoting Safe and Stable Families Amendments of 2001 (P.L. 107-133). The Mentoring Children of Prisoners Program was authorized to receive “such sums as necessary” for FY2007-FY2011. It received \$49 million for each of FY2007-FY2010, but it received no appropriation (\$0) for FY2011.<sup>4</sup>

Further, P.L. 112-34 does not extend funding for the National Random Sample Study of Child Welfare (a.k.a., the National Survey of Child and Adolescent Well-Being, NSCAW). The study has collected nationally representative and longitudinal data on children and families who come into contact with the child welfare agency. It includes firsthand reports from these children, their parents or other caregivers, and their caseworkers and teachers. The study has received annual funding since its initial authorization in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193); it received \$6 million in mandatory funds for FY2011.<sup>5</sup>

## **Requirements Related to Serving Children and Their Families**

States that seek to receive formula grant funds under the Title IV-B Child Welfare Services or Promoting Safe and Stable Families programs and states that wish to receive federal reimbursement for a part of the cost of providing foster care, adoption assistance, and guardianship assistance to eligible children (under the federal “Title IV-E program”) must meet specific federal requirements. The Child and Family Services Improvement and Innovation Act makes several adjustments and additions to these federal child welfare requirements.

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and its appropriation for FY2011 was \$281 million.

<sup>3</sup> This level of mandatory funding (\$345 million) is equal to mandatory funding provided for the Promoting Safe and Stable Families program in each of FY2006-FY2010. However, it is \$20 million less than the amount provided in mandatory funds for that program for FY2011. The FY2011 mandatory funding level of \$365 million was authorized by P.L. 111-242. According to the Congressional Budget Office (CBO), the changes made in that law did not permanently increase the funding provided in the annual baseline for the program. Consequently, for FY2012 and for each subsequent year (unless Congress acts to change this) the direct (i.e., mandatory) funding included in the CBO baseline for the Promoting Safe and Stable Families program is \$345 million.

<sup>4</sup> For more information on this program see CRS Report RL34306, *Vulnerable Youth: Federal Mentoring Programs and Issues*, by Adrienne L. Fernandes-Alcantara.

<sup>5</sup> More information on this study and its findings are available at the website of the U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Planning, Research and Evaluation [http://www.acf.hhs.gov/programs/opre/abuse\\_neglect/nscaw/index.html](http://www.acf.hhs.gov/programs/opre/abuse_neglect/nscaw/index.html).

## **Targeting and Defining Services**

A primary purpose of the Promoting Safe and Stable Families program (hereinafter, the “Safe and Stable program”) is to “prevent child maltreatment among families at risk through the provision of supportive family services.”<sup>6</sup> The Child and Family Services Improvement and Innovation Act requires states, as part of their state plan for this program, to describe how they identify these “at risk” families and how services are targeted to them.

Under the Safe and Stable program, states are required to spend no less than 90% of the funds they receive on four categories of services for children and their families: family support, family preservation, time-limited reunification, and adoption promotion and support. Moreover, federal law requires states to spend “significant portions” of the Safe and Stable program funds on each of these four service categories.<sup>7</sup> “Family support services” are intended to strengthen and stabilize families, improve parenting skills, promote children’s safety and well-being, and enhance their development.<sup>8</sup> The Child and Family Services Improvement and Innovation Act amends the definition of those services to clarify that states may use these funds to provide mentoring programs for children. Also, it specifically defines this mentoring as a “structured managed program in which children are appropriately matched with screened and trained adult volunteers for one-on-one relationships, involving meetings and activities on a regular basis, intended to meet, in part, the child’s needs for involvement with a caring and supportive adult who provides a positive role model.”<sup>9</sup>

The Child and Family Services Improvement and Innovation Act also revises the definition of “time-limited family reunification services” used in the Safe and Stable program. These are services and activities intended to safely permit a child and his/her parent(s) to be reunited within the first 15 months after the child was removed from the parent’s home (and placed in foster care). The services and activities are now stipulated as counseling, substance abuse treatment, assistance to address domestic violence, services to provide temporary child care, and transportation to and from any of these services.<sup>10</sup> The new measure adds the following to these activities: peer-to-peer mentoring, support groups for parents and primary caregivers, and services and activities aimed at facilitating visits and other connections between children in foster care and their parents and siblings.

## **Attention to the Well-Being of Children in Foster Care**

The Child and Family Services Improvement and Innovation Act makes a number of changes to state plan requirements that are intended to protect children in foster care and enhance their permanence and well-being.

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<sup>6</sup> §430(1) of the Social Security Act.

<sup>7</sup> §432(a)(4) of the Social Security Act

<sup>8</sup> §431(a)(2) of the Social Security Act.

<sup>9</sup> This definition of “mentoring” is what is currently included in the Mentoring Children of Prisoners Program (§439(b)(2) of the Social Security Act).

<sup>10</sup> §432(a)(7) of the Social Security Act.

### ***Protocols for Use of Psychotropic Medications and Responding to Emotional Trauma***

As part of a currently required health and mental health oversight plan for all children in foster care,<sup>11</sup> P.L. 112-34 requires states to develop specific protocols related to the appropriate use of psychotropic medication for children in foster care. Further, under the new measure states must also outline in this same oversight plan how they will respond to emotional trauma that is experienced by children in foster care (including trauma based on the children's experience of child abuse or neglect and trauma based on their removal from their biological homes).

### ***Meeting Developmental Needs of Young Children***

Separately, P.L. 112-34 requires each state to describe the activities it undertakes to meet the developmental needs of the very young children served (those four years of age or younger), including those activities to shorten the length of time those young children spend without a permanent family.

### ***Clarifying for Whom Educational Stability Planning is Required***

P.L. 112-34 also revises current law education stability planning provisions<sup>12</sup> to ensure that efforts to enroll children, in a timely manner, in the school that is most appropriate for them and in their best interests (and with all necessary records supplied) must apply both when a child is first placed in foster care and at any subsequent placement move that occurs while the child remains in foster care.

### ***Monitoring Possible Identify Theft***

In an effort to combat identity theft, it further requires that for any youth in foster care at age 16 or older, the state must annually obtain the child's credit report, provide it to the youth at no cost, and provide the youth with an explanation of what is in the report and appropriate guidance.

## **Continued Attention to Caseworker Visits with Children in Foster Care**

Reviews of state child welfare performance have found that regular and quality caseworker visits with children in foster care are associated with more timely achievement of appropriate permanency goals and better placement stability for these children.<sup>13</sup> The Child and Family Services Improvement and Innovation Act extends and revises current requirements related to ensuring that children in foster care are visited on a monthly basis and ensuring that the majority of caseworker visits with children in foster care take place where the child lives. In addition, P.L. 112-34 requires HHS to report additional information to Congress related to state performance on caseworker visits. Finally, the new law continues funding to states (\$20 million provided in each of FY2012-FY2016) for formula grants to support monthly caseworker visits. However, it adjusts their focus somewhat.

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<sup>11</sup> §422(b)(15) of the Social Security Act.

<sup>12</sup> §475(1)(G) of the Social Security Act..

<sup>13</sup> See findings regarding caseworker visits at <http://www.acf.hhs.gov/programs/cb/cwmonitoring/results/index.htm>.



## Ensuring Monthly Caseworker Visits

States are required to have standards in place to ensure both the quality and frequency of caseworker visits with children in foster care.<sup>14</sup> Separately, beginning with FY2007 states were required to provide data to HHS on the number of children in foster care who were visited on a monthly basis while they were in care, and to take steps to ensure that no later than October 1, 2011, at least 90% of the children in their foster care systems receive a visit from their caseworker no less often than once each month they are in care.<sup>15</sup> For FY2007, just one state was able to report that at least 90% of children in its foster care caseload were visited on a monthly basis. In fact, as many as 31 states reported for that year that caseworkers had visited less than half of the children in their caseloads in every month the children were in foster care. By FY2010—the most recent year for which these performance data are available—the number of states that reported they visited 90% or more of their children in foster care in every month they were in care had climbed to just seven. However, many states made significant progress toward the October 1, 2011, goal of 90%. The number of states where fewer than half the children in care were visited on a monthly basis declined to just nine and the average of all state averages of children visited monthly improved from 42% in FY2007 to 71% in FY2010.<sup>16</sup>

The Child and Family Services Improvement and Innovation Act extends and revises the requirements related to ensuring children in foster care are visited on a monthly basis. Specifically, each state is required to ensure that for each of FY2012, FY2013, and FY2014, it completes no fewer than 90% of the required monthly caseworker visits, and for FY2015, and every subsequent fiscal year, each state must complete 95% of those visits.

Generally, states are required to provide at least 25% of Child Welfare Services program costs with non-federal resources in order to draw down their full federal allotment of Child Welfare Services program funding. However, beginning with FY2008 any state that failed to make the required progress toward the goal of ensuring that 90% of children in foster care received a monthly visit from their caseworker (as of October 1, 2011) was required to provide from 26% to 30% of Child Welfare Services program costs. Within that range, the specific amount of program costs to be provided by a state (from non-federal sources) depended on the degree of a state's failure to achieve the target caseworker visit percentage.<sup>17</sup> If the state did not put up these additional non-federal funds, it was not eligible to receive its full federal allotment under the program.<sup>18</sup>

The Child and Family Services Improvement and Innovation Act continues to require states to increase the share of non-federal resources they commit to the Child Welfare Services if they do

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<sup>14</sup> §422(b)(17) of the Social Security Act.

<sup>15</sup> §424(e) of the Social Security Act (as added by §7(b) of P.L. 109-288).

<sup>16</sup> Information regarding state performance based on CRS communication with HHS/ACF/ACYF. For purposes of this provision and these counts, "states" include all 50 states, the District of Columbia, and Puerto Rico. The state average share of children visited is equal to the average of all state averages.

<sup>17</sup> Specifically, a state that misses its target caseworker visit percentage by less than ten percentage points must cover an additional 1% of program costs in non-federal dollars (i.e., it must provide non-federal support of at least 26% of total Child Welfare Services program costs to receive its full federal allotment under the program); a state that misses its target percentage by at least 10 full percentage points but less than 20 full percentage points must provide an additional 3% of program costs (i.e., at least 28% of program costs) and a state that misses its target percentage by a full 20 percentage points or more must provide an additional 5% (i.e., at least 30% of program costs).

<sup>18</sup> Fourteen states missed their target caseworker visit percentage for FY2008, 11 states missed the percentage for FY2009, and 19 states missed it for FY2010. Each of these states was required to provide additional funds in order to receive their full federal grant in FY2009, FY2010, and FY2011, respectively. Nearly every state provided these additional non-federal funds to avoid reduced federal funding.



not meet the caseworker visit percentage, and, as under prior law, states that do not provide this additional funding are ineligible to receive their full federal allotments. At the same time, P.L. 112-34 changes the way state compliance with the monthly caseworker visit percentage is calculated. Previously, the percentage was calculated based on the share of *children* in foster care who receive a monthly visit. By contrast, under the Child and Family Services Improvement and Innovation Act, compliance with the monthly caseworker visits requirements is to be determined based on the share of *monthly caseworker visits* completed by a state.

Here is a simplified example of the difference: A state has 10 children in foster care for each of the 12 months during the fiscal year. During that fiscal year, caseworkers visit five of those children in each of those 12 months, but they visit the remaining five children in just 11 of those 12 months. Under the current calculation, a state's monthly caseworker visit percentage would be 50%—half of the children received a visit in every month they were in care, half did not. Under the Child and Family Services Improvement and Innovation Act (as enacted), the same state's monthly caseworker percentage is 96%—the state was required to make a total of 120 caseworker visits, and a total of 115 of those visits were made.

### **Ensuring the Majority of Visits Occur Where Child In Foster Care Lives**

States have also been required to ensure (no later than October 1, 2011) that a majority of monthly caseworker visits with children in foster care occur where the child lives. For FY2009 (the most recent data publicly available), nearly every state reported that well above 50% of their monthly caseworker visits occurred where the child in foster care lived.<sup>19</sup> The Child and Family Services Improvement and Innovation Act provides that for FY2012, and every succeeding fiscal year, a state must ensure that no less than 50% of all caseworker visits with children in foster care occur where the child lives. Further, states failing to meet this benchmark are now subject to reduced federal cost sharing in the Child Welfare Services program. Any reduction is to be calculated in the same way as provided for states failing to meet the monthly caseworker visit percentage. Further, these penalties are to be separately assessed, and cumulative. That means if a state missed both the required caseworker visit percentage *and* the required percentage of caseworker visits that occur where the child lives, the state would be required to pay—with non-federal resources—anywhere from 27% to 35% of total Child Welfare Services program costs in order to receive its full federal program allotment.

### **Reporting Related to Monthly Caseworker Visits**

HHS is required to provide annual information to Congress on how states perform on certain child welfare outcomes and other measures. Among these, they are required to provide state-by-state data on the share of children in foster care who received a visit in each month they were in foster care and the number of those visits that occurred where the child lives.<sup>20</sup> The Child and Family Services Improvement and Innovation Act further requires HHS to provide state-by-state information on the number of monthly caseworker visits that a state completed compared to the total number of monthly caseworker visits it was required to complete.

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<sup>19</sup> Alaska and Rhode Island were the only states that did not meet this standard for FY2009. See data, by state, available on the Child Welfare Outcomes website at [http://cwoutcomes.acf.hhs.gov/data/tables/caseworker\\_visits?](http://cwoutcomes.acf.hhs.gov/data/tables/caseworker_visits?)

<sup>20</sup> §479A(a)(6) of the Social Security Act. Data are available online at [http://cwoutcomes.acf.hhs.gov/data/tables/caseworker\\_visits?](http://cwoutcomes.acf.hhs.gov/data/tables/caseworker_visits?)

## **Grants to States to Support Improved Caseworker Visits for Children in Foster Care**

Beginning with funds provided for FY2006, states have received grants (distributed on a formula basis) to support monthly caseworker visits. Funding for these grants is provided by a reservation of mandatory funds provided for the Safe and Stable program. A total of \$95 million was reserved for distribution among all states for this purpose (across FY2006-FY2011), including \$20 million in each of FY2010 and FY2011. States were required to use these funds to support monthly caseworker visits of children in foster care with a “primary emphasis” on activities to improve the recruitment, retention, and training of caseworkers and to enable caseworkers to “access the benefits of technology.”<sup>21</sup>

The Child and Family Services Improvement and Innovation Act continues to set aside mandatory funds for the Safe and Stable Program to provide grants related to caseworker visits of children in foster care. The amount of funding reserved is \$20 million in each of FY2012-FY2016 (for a total of \$100 million across those five years). As stipulated by P.L. 112-34, the funds are available to states to improve the quality of monthly caseworker visits, with a new emphasis on better caseworker decision-making as well as a continued emphasis on activities to increase the retention, recruitment, and training of caseworkers.

## **Other Program Reporting and Accountability Measures**

The Child and Family Services Improvement and Innovation Act requires states to describe, and as necessary increase, the sources of information used to report on child maltreatment-related fatalities. Separately, it requires HHS to make state fiscal data on the use, or planned uses, of funds provided under the Safe and Stable and Child Welfare Services programs more accessible. Finally, it requires the U.S. Government Accountability Office (GAO) to study the variety of sources of federal funding states use to support the same purposes as those for which funds are provided under the Safe and Stable and Child Welfare Services programs, and to study current access (or lack of access) of children and their families to the kinds of services provided by those programs.

## **Increased Data Sources for Child Maltreatment Reporting**

State child welfare agencies are required—to the “maximum extent practicable”—to annually provide information to HHS on the number of children who died in their state due to child abuse or neglect.<sup>22</sup> A July 2011 report on this issue by GAO found that many state child welfare agencies do not report data on this issue from all relevant sources (i.e., sources other than the child welfare agency). As a result, GAO concludes, the national number of children who are estimated to have died in a given fiscal year due to child abuse or neglect—for FY2009, that number was 1,770—likely understates the total child deaths attributable to abuse or neglect.<sup>23</sup>

The Child and Family Services Improvement and Innovation Act requires each state, as part of its Child Welfare Services program plan, to describe the sources of information it uses in reporting child maltreatment-related fatalities. Further, if a states does not include information on these

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<sup>21</sup> §436(b)(4) of the Social Security Act. In addition to funds reserved at this part of the law, §3 of P.L. 109-288 made available \$40 million in mandatory Safe and Stable program funds to support monthly caseworker visits of children in foster care.

<sup>22</sup> §106(d)(5) of the Child Abuse Prevention and Treatment Act.

<sup>23</sup> U.S. Government Accountability Office (GAO), *Child Maltreatment: Strengthening National Data on Child Fatalities Could Aid in Prevention*, July 7, 2011, <http://www.gao.gov/products/GAO-11-599>.

deaths from state vital statistics, child death review teams, law enforcement agencies, or offices of medical examiners or coroners, it must describe why this is the case and how the information will be included.

## **More Accessible Fiscal Data on Child and Family Services Spending for Child Welfare Purposes**

States are required, as part of their Safe and Stable program plan, to annually provide HHS with information on planned and actual spending for child welfare-related child and family services and on the numbers of children and families served. The information is to be submitted by June 30 of each year and must be presented on standard forms. HHS, in turn, is required to compile these financial reports made by states and, not later than September 30 of each year, submit the compilation to the House Ways and Means Committee and the Senate Finance Committee. The current compilation consists of copies of each state's financial forms organized alphabetically.

The Child and Family Services Improvement and Innovation Act requires HHS to provide some synthesis of this data in addition to providing these individual state reports. Specifically, it requires tables that show certain national totals derived from the state reports, including national totals related to planned and actual spending by service category for the Safe and Stable program and planned spending by service category for the Child Welfare Services program. In addition to providing these reports to the House Ways and Means Committee and the Senate Finance Committee by September 30 of each year, HHS is also required (by that same date) to publish the compiled information on the agency's website (in a location easily accessible to the public).

## **GAO Study on Service Funding and Access**

Not later than 12 months after enactment of the Child and Family Services Improvement and Innovation Act, GAO is required to submit a report to Congress that (1) identifies alternative sources of federal funding that states or other entities use to support the same purposes that are supported by any federal funds provided under Title IV-B, including those under the Child Welfare Services and Safe and Stable programs; and (2) assesses the needs of families eligible for such services and programs, including identifying underserved communities, and providing information on supports for caseworkers to manage their caseloads in a safe and appropriate manner, the length of time families wait to receive substance abuse and other preventive services, the number of families waiting for such services, and the effect of the delay on healthy, successful reunification outcomes for families.

## **Court Improvement Program**

For each of FY2012-FY2016, the Child and Family Services Improvement and Innovation Act continues to reserve \$30 million in mandatory Safe and Stable program funds for the Court Improvement Program—plus 3.3% of any discretionary funding provided for the Safe and Stable program.<sup>24</sup> Further, P.L. 112-34 amends and expands the purpose of those grants, permits courts to submit a single application to receive grants for all of the program purposes, and, for the first

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<sup>24</sup> The amount of the discretionary set-aside for courts varies with any changes in the amount of discretionary appropriations provided. Under P.L. 112-34, the Safe and Stable program continues to be authorized to receive up to \$200 million in discretionary appropriations for each of FY2012-FY2016. If funds were appropriated at that maximum authorized level, the set-aside of discretionary funds for court improvement would reach its maximum authorized level as well (\$6.6 million).

time, reserves some of the Court Improvement Program funding for tribal court improvement grants.

### ***Purposes***

The Court Improvement Program entitles the highest court in each state to receive funds to support three types of court improvement grants—basic, data, or training. The purpose of a basic grant is to assess and improve their handling of child welfare proceedings; the purpose of a data grant is to support better data collection and analysis to improve the timeliness and completeness of court actions related to children; and the purpose of a training grant is to increase the knowledge of judges, attorneys, and other legal personnel related to child welfare court proceedings.<sup>25</sup> P.L. 112-34 continues those prior law purposes but expands on the purposes associated with both basic and training grants. Specifically, for both of those types of grants it also supports court efforts to increase and strengthen engagement of families in child welfare proceedings, including those related to family preservation, family reunification, and adoption. Further, P.L. 112-34 amends the basic grant purposes to emphasize the importance of concurrent planning (i.e., efforts to move toward adoption or some other permanent home for a child even as efforts to permit family reunification are ongoing).

### ***Funding by Grant and for Tribes***

For FY2011, the Court Improvement Program received a total of \$32 million, of which \$30 million was reserved from the mandatory Safe and Stable program funding and \$2 million was provided via a set-aside from the \$63 million in discretionary funding that was provided for the Safe and Stable program.<sup>26</sup> From this amount, each of the three Court Improvement grants received \$10 million in mandatory funds; in addition, the basic grant received all of the \$2 million in discretionary funds (for a total of \$12 million in funding for that grant type).

The Child and Family Services Improvement and Innovation Act continues the same overall reservation of funds from the Safe and Stable program for each of FY2012-FY2016 (i.e., \$30 million in mandatory funds *plus* 3.3% of any discretionary funding provided for the Safe and Stable program). However, it reserves \$1 million in mandatory Safe and Stable program funds for competitive grants to tribal courts and it reduces the amount of mandatory funds available for basic grants to state highest courts by that same amount. (Accordingly, funds available for basic court improvement activities in each of FY2012-FY2016 will be \$9 million plus 3.3% of any discretionary funds appropriated for the Safe and Stable program, while data and training grants will both continue to receive \$10 million each in mandatory Safe and Stable funds for each of those same years). For purposes of the competitive grants to tribal courts, P.L. 112-34 defines eligible tribal courts as the highest court of any tribe or tribal consortium that (1) is operating a Title IV-E program (with an approved Title IV-E plan), (2) is working toward approval of a Title IV-E plan (as evidenced by its receipt of a tribal IV-E implementation grant), or (3) has a court that is responsible for proceedings related to adoption and foster care.

### ***Application and Amount of Grant to Courts***

For FY2006-FY2011, the highest state courts were required to submit separate applications to receive each kind of Court Improvement grant (basic, data, and training). Further, they were

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<sup>25</sup> §438 of the Social Security Act.

<sup>26</sup> The statute stipulates that 3.3% of any discretionary funds provided for the Safe and Stable program must be reserved for the Court Improvement Program.

entitled to an award of \$85,000 for each successful grant application, plus a share of the remaining funds for a given grant based on the share of individuals in the court's state that were under the age of 21 (relative to the under-age-21 population in all the states where courts successfully applied for the grant). The Child and Family Services Improvement and Innovation Act permits courts to access funds for each of the three main grant purposes (basic, data, and training) by providing a single application. Courts, however, are required to indicate which one (or more) of the grant types they are applying for and to meet any previously existing application requirements related to those grant types. Further, they continue to be entitled to a grant amount of \$85,000 for each of the three grant types plus a portion of the remaining funds for that grant type based on the under-age-21 population in their state relative to that population in all states applying for the particular grant type.

## **Regional Partnership Grants to Improve Outcomes For Children Affected by Parental Substance Abuse**

Between FY2007 and FY2011, Congress provided \$145 million in mandatory funds (reserved from the Safe and Stable program) to support grants to regional partnerships to improve outcomes for children who are at risk of entering foster care, or who have entered foster care, due to their parents' abuse of methamphetamine or other substances. For the most recent two years (FY2010 and FY2011), the annual funding set-aside for these grants was \$20 million. Funding under this program has been provided to 53 regional partnerships operating in 29 states.<sup>27</sup>

The Child and Family Services Improvement and Innovation Act reserves a total of \$100 million in mandatory Safe and Stable program funding—\$20 million in each of five years (FY2012–FY2016)—for regional partnership grants. P.L. 112-34 removes the specific focus on methamphetamine abuse but retains the overall focus on substance abuse. It permits current grantees to seek a maximum two-year extension of their current grant and also clarifies that current grantees, as well as new ones, may apply for and be approved to receive more than one grant at a time. Additionally, the law limits HHS administrative expenditures under this grant program to no more than 5% of the funding provided. Finally, it requires HHS to conduct an evaluation of the grants provided under this authority between FY2007 and FY2011 and, separately, an evaluation of grants provided under this authority between FY2012 and FY2016. The first evaluation must be posted online no later than December 31, 2012, and the second no later than December 31, 2017.

## **Uniform Definition of Indian Tribe and Tribal Organization**

The Child and Family Services Improvement and Innovation Act makes the definitions of “Indian tribe” and “tribal organization” the same for both the Child Welfare Services program and the Safe and Stable program. For both programs, it references the definitions of those terms that are included in Section 4 of the Indian Self Determination and Education Assistance Act. (Those definitions were previously in place for the Child Welfare Services program. However, the definition of tribe under the Safe and Stable program had referenced a definition of the term that

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<sup>27</sup> For more information, see “Grants to Regional Partnerships to Improve Outcomes of Children Affected by Parental Substance Abuse” in CRS Report R41860, *Child Welfare: Funding for Child and Family Services Authorized Under Title IV-B of the Social Security Act*, by Emilie Stoltzfus.



was used in the Social Security Act's Title IV-F Job Opportunities and Basic Skills (JOBS) program. The JOBS program was repealed in 1996.)<sup>28</sup>

In general, the Indian Self Determination and Education Assistance Act defines "Indian tribe" as any federally recognized Indian tribe, including Alaska Native Villages.<sup>29</sup> Further, it generally defines a "tribal organization" as the "recognized governing body" of an Indian tribe and certain other legally established organizations.<sup>30</sup>

## Data Standardization

Finally, under Title IV-B, the Child and Family Services Improvement and Innovation Act requires HHS, with the Office of Management and Budget (OMB)—and in consultation with the states—to issue regulations on standard data elements and standard data reporting requirements for any category of information to be reported under Title IV-B. The longer-term goal of this policy, of which the data standardization effort under Title IV-B is one step, will be to allow accurate interstate communication about benefits and services provided, to both reduce fraud and abuse and to improve services, across programs, to children and families.<sup>31</sup>

## Title II: Proposed Changes Related to Child Welfare Waiver Authority

Title II of the Child and Family Services Improvement and Innovation Act renews the authority of HHS to waive certain requirements of federal child welfare policy to permit states to conduct demonstration projects, sometimes referred to as "waiver projects." These projects must be likely to promote the child welfare objectives included in Title IV-B and Title IV-E of the Social Security Act. As discussed in the first part of this report, Title IV-B authorizes federal grants to states for provision of a broad range of services intended to strengthen and support families in ways that enhance the safety and stability of children and increase the well-being of children and their families. Title IV-E, by contrast, primarily provides federal reimbursement to states for a part of the cost of providing foster care to eligible children (including payments for room and board and cost of permanency planning activities), and for the cost of providing assistance on behalf of eligible children who leave foster care for adoption or guardianship. Similar to the Title IV-B purposes, the

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<sup>28</sup> The Title IV-F (of the Social Security Act) JOBS program was linked to the prior law cash welfare program, known as Aid to Families with Dependent Children (AFDC). Along with AFDC, it was repealed by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193). In general, the definition of "tribe" used in that program was any federally recognized tribe that has a reservation, has public domain allotments, or is in Oklahoma and formerly had a reservation. Further, "tribal organization" is currently defined in the Safe and Stable program as the "recognized governing body" of a tribe.

<sup>29</sup> Specifically, §4(e) of the Indian Self-Determination and Education Assistance Act defines "Indian tribe" as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporations as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) [43 U.S.C. 1601 et. seq.], which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

<sup>30</sup> Specifically, §4(l) of the Indian Self-Determination and Education Assistance Act referenced in the Child Welfare Services program defines "tribal organization" as the "recognized governing body of any Indian tribe; any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body or which is democratically elected by the adult members of the Indian community to be served by such organization and which includes the maximum participation of Indians in all phases of its activities: *Provided*, That in any case where a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant."

<sup>31</sup> See H.Rept. 112-210, pp. 23-24.

primary purposes of federal dollars provided to states under Title IV-E are to ensure the safety of children, to secure permanence for them, and, overall, to enhance their well-being.

## **Duration of Waiver Authority and Waiver Projects**

Authority for HHS to approve up to 10 new demonstration projects each year expired with the last day of March 2006. The Child and Family Services Improvement and Innovation Act renews the authority of HHS to approve as many as 10 demonstration projects, per year, for three years (FY2012-FY2014). Under past waiver authority, HHS could authorize demonstration projects to last for up to five years, and if it determined that the project warranted continuation, it could grant renewals or extension of the authority to operate the waiver beyond that timeframe. The Child and Family Services Improvement Act maintains those provisions. However, it newly stipulates that no waiver project can be in operation after September 30, 2019. The requirement that all projects end as of that date applies to any waiver whether it is currently being implemented or whether it is implemented sometime after enactment of the Child and Family Services Improvement and Innovation Act.

## **State Eligibility to Conduct a Demonstration Project**

The Child and Family Services Improvement and Innovation Act further establishes additional requirements for states seeking to implement a new demonstration project (i.e., a project receiving initial HHS approval in any year from FY2012 to FY2014). It provides that no state could be approved to operate a new demonstration project unless it can demonstrate that it had done the following:

- Put in place child welfare policies or procedures that will allow it to operate a demonstration project effectively and achieve the project goals.
- Identified one (or more) of the following three goals that the demonstration project will be designed to accomplish: (1) increasing permanence for children of all ages by reducing their lengths of stay in foster care, when possible, and by promoting a successful transition to adulthood for older youth; (2) increasing positive outcomes and improving the safety and well-being of children of all ages who are living in their own homes and communities, including tribal communities; and (3) preventing child abuse and neglect and the re-entry of children of any age to foster care.
- Implemented, or have definite plans to implement, at least 2 of 10 child welfare program improvement policies (specified in the law).

## **Child Welfare Program Improvement Policies**

In general (and unless otherwise noted), the program improvement policies now listed in the law are to apply to children in foster care of any age (i.e., infants, children, and youth). The program improvement policies listed are to

1. establish a bill of rights;
2. develop and implement child-specific health care planning;
3. opt to provide kinship guardianship assistance under Title IV-E;
4. opt to provide Title IV-E foster care assistance to eligible youth who remain in care until their 21<sup>st</sup> birthday, as well as Title IV-E adoption or guardianship



- assistance to eligible youth, up to age 21, who leave foster care for adoption or guardianship after their 16<sup>th</sup> birthday;
5. reduce the use of congregate care for children or youth;
  6. accomplish more frequent placement of siblings in the same foster care, adoption, or guardianship setting;
  7. develop and implement a plan to recruit and retain high-quality foster parents, including through provision of additional supports and training;
  8. establish procedures to allow youth in foster care (ages 12 or older) to participate in age-appropriate extracurricular activities, have appropriate access to computers and cell phones, obtain a driver's license, receive counseling and financial support for post-secondary education, and be notified of where siblings are placed or located;
  9. allow every youth in care (age 16 or older) to explore whether they wish to reconnect with members of their biological family, and if so, how to do so safely; and
  10. establish one or more of a variety of programs designed to prevent children of all ages from entering foster care or to provide permanency for those in foster care (i.e., intensive family finding, kinship navigator, family counseling/family group decision-making/in-home peer support, comprehensive family-based substance abuse treatment, identify and address domestic violence that endangers children and puts them at risk of foster care entry, and mentoring).

### ***Child Welfare Program Improvement Implementation Requirements***

The Child and Family Services Improvement and Innovation Act further provides that at least one of those improvement policies must be implemented after the date on which the state submits its application for a waiver project. Further, it permits HHS to terminate a state's authority to operate a waiver project if the state, in the judgment of HHS, has not made significant progress toward implementing the improvement policy within three years of HHS granting approval for the project.

### ***Projects That May Be Undertaken***

In general, a state may continue to propose implementing any kind of demonstration project that is consistent with federal child welfare policy. However, the law now identifies two specific kinds of projects that states may choose to consider. These are to establish a program to (1) identify and address domestic violence that endangers children and results in their placement in foster care; or (2) permits federal (Title IV-E ) foster care maintenance payments to be made on behalf of a child residing in a long-term therapeutic family treatment center.

For purposes of this provision, P.L. 112-34 defines a "long-term therapeutic family treatment center" as a program licensed or certified by the state that "enables parents and their children to live together in a safe environment" for not less than six months and that provides, either onsite or by referral, the following services or activities: substance abuse treatment, children's early intervention, family counseling, legal, nursery and preschool, parenting skills training, pediatric care, prenatal care, sexual abuse therapy, relapse prevention, transportation, and job or vocational training (or classes leading to a high school diploma or a GED).

## **Accounting for Spending on Services Before and During a Project**

The Child and Family Services Improvement and Innovation Act further requires that states applying for a waiver project provide an accounting of “additional” federal, state, or local funds—as well as any private investments made in coordination with the state—that were used in the two years preceding the state’s application to provide services under the waiver project. The state is also required to provide this accounting during each year the project is in operation.

## **No Requirement for, or Preference Related to, Random Assignment**

The Child and Family Services Improvement and Innovation Act continues to require that any state with an approved waiver project must ensure that an independent evaluation of the project is conducted, that the evaluation design be approved by HHS, and that the design permits a comparison of outcomes for children and families served under the project with those not served. Also, as was the case prior to the enactment of P.L. 112-34, the law does not specify the kind of evaluation comparison design that must be used (or restrict it to any one kind of design). However, the Child and Family Services Improvement and Innovation Act *removes* current language that requires states (as part of their application for waiver project approval) “where appropriate” to describe how children and families will be randomly assigned to groups that are served (experimental) or not served (control) under the project. Further, P.L. 112-34 explicitly prohibits HHS from taking into consideration the fact that a state is using (or not using) a random assignment design as part of its decision to approve (or disapprove) of a child welfare waiver project.

## **Tribes With IV-E Plans Permitted to Seek Waivers**

Beginning with FY2010, federal law permits tribes to operate directly a Title IV-E program and to receive federal support for foster care, adoption assistance, and guardianship assistance provided under that program. A number of tribes are actively working toward HHS approval of a Title IV-E plan, which is a necessary pre-requisite to receiving federal reimbursement of costs incurred under such a program. The Child and Family Services Improvement and Innovation Act permits any tribal entity that is approved by HHS to operate a Title IV-E program to apply for approval of a child welfare waiver.

## **Reports on the Waiver Project**

The Child and Family Services Improvement and Innovation Act replaces the current law requirement that states provide HHS with interim and final reports on the evaluation. It instead requires states to submit periodic reports on programs and strategies used to serve children and their families and the outcomes achieved for them during the period that the waiver project is being conducted. States are also required to post these periodic reports on their websites. In addition, P.L. 112-34 requires HHS to provide to the House Committee on Ways and Means and the Senate Committee on Finance (1) periodic reports based on these state level reports, and (2) a report that analyzes the results of the demonstration project evaluations and makes recommendations for any administrative or legislative changes it determines appropriate.

## **Effective Dates**

The amendments made by the Child and Family Services Improvement and Innovation Act that are related to extension of waiver authority are effective on the date of enactment of H.R. 2883

(September 30, 2011). The amendments made with regard to data standardization are effective as of October 1, 2012. All of the other amendments are effective as of October 1, 2011. However, if HHS determines that a state needs to pass specific legislation (not appropriations) to allow it to comply with a new or amended (Title IV-B or Title IV-E) state plan requirement made by the act, that state may have some additional time (specified in statute) to come into compliance.

## **Congressional Action on the Bill**

Substantively identical versions of the Child and Family Services Improvement and Innovation Act were introduced on September 12, 2011, in the House and the Senate. The House bill (H.R. 2883) was introduced by Representative Geoff Davis, with Representative Lloyd Doggett, and the Senate bill (S. 1542) was introduced by Senator Max Baucus with Senator Orrin Hatch. The introduction of the Child and Family Services Improvement and Innovation Act was announced by the House Ways and Means Committee in a press release that quoted Senators Baucus and Hatch along with Representatives Davis and Doggett.<sup>32</sup>

### ***Previous Legislation***

Some of the provisions in the Child and Family Services Improvement and Innovation Act were previously included in the Child and Family Services Extension and Improvement Act (H.R. 2790), introduced on August 2, 2011, by Representative Geoff Davis, with Representative Doggett; the State Child Welfare Innovation Act (S. 1013), introduced on May 17, 2011, by Senator Baucus, with Senators Hatch, Enzi, and Rockefeller; the Partners for Stable Families and Foster Youth Affected by Methamphetamine and Other Substance Abuse Act (S. 1234), introduced on June 20, 2011, by Senator Grassley; and a bill to renew the authority of HHS to grant child welfare waivers (H.R. 1194), which was introduced by Representative McDermott, with Representative Geoff Davis, and passed the House on May 31, 2011.

### ***Hearings***

The introduction of the Child and Family Services Improvement and Innovation Act followed a March 2011 hearing held by the Senate Finance Committee with regard to child welfare waiver authority<sup>33</sup> as well as several related hearings held by the Subcommittee on Human Resources of the House Ways and Means Committee—including those that looked at data matching (March 2011),<sup>34</sup> improving Title IV-B programs (June 2011),<sup>35</sup> and child maltreatment-related deaths (July 2011).<sup>36</sup>

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<sup>32</sup> “Baucus, Hatch, Davis, Doggett Unveil Legislation to Improve, Extend Child Welfare Programs,” September 12, 2011, <http://waysandmeans.house.gov/News/DocumentSingle.aspx?DocumentID=259620>.

<sup>33</sup> “Innovations in Child Welfare Waivers: Starting on the Pathway to Reform,” March 10, 2011, <http://finance.senate.gov/hearings/hearing/?id=e1ac1670-5056-a032-5201-3f2360456776>. See also, from the 111<sup>th</sup> Congress hearing of the Subcommittee on Income Security and Family Support of the House Ways and Means Committee (now called the Subcommittee on Human Resources), “Hearing to Review the Use of Child Welfare Waiver Demonstration Projects to Promote Child Well-Being,” July 29, 2010.

<sup>34</sup> “Data Matching to Improve Customer Service, Program Integrity and Taxpayer Savings,” March 11, 2011, <http://waysandmeans.house.gov/Calendar/EventSingle.aspx?EventID=227395>.

<sup>35</sup> “Improving Programs Designed to Protect At-Risk Youth,” June 16, 2011, <http://waysandmeans.house.gov/Calendar/EventSingle.aspx?EventID=245728>.

<sup>36</sup> “Child Deaths Due to Child Maltreatment,” July 12, 2011, <http://waysandmeans.house.gov/Calendar/EventSingle.aspx?EventID=249922>.

### ***Committee and Full Chamber Action***

On September 14, 2011, the House Ways and Means Committee held a markup of H.R. 2883 and unanimously agreed to report the bill favorably to the full House. The committee submitted a report on the bill (H.Rept. 112-210) to the full House on September 19, 2011. On September 21, 2011, the full House passed H.R. 2883 under suspension of the rules (with a recorded vote of 395-25).<sup>37</sup>

On September 20, 2011, the Senate Finance Committee held a markup of S. 1542 and agreed to report that bill favorably to the Senate floor (without amendment). For a bill to be enacted, both chambers must act on the same bill. Therefore, when the full Senate took up the Child and Family Services Improvement Act on September 22, 2011, it acted on the House-passed bill (H.R. 2883), which was identical to S. 1542, and passed it by unanimous consent.

The bill was presented to the President on September 27, 2011, and was signed into law on September 30, 2011 (P.L. 112-34).

### **CBO Cost Estimate**

The Congressional Budget Office (CBO) estimated no significant direct (mandatory) spending costs for H.R. 2883. This is because all of the mandatory funding included in the bill (and related to the Safe and Stable program) is currently counted in the baseline. Further, none of the policy changes that are made by the bill were deemed by CBO to have a significant effect on federal spending. CBO did note that certain of the new requirements would necessitate some additional spending by states. However, it assumed the amount of this spending would be “small” and, therefore, was not enough for the legislation to be considered as creating an unfunded mandate.<sup>38</sup>

CBO’s cost estimate notes that the bill also extends discretionary funding authorization for the Child Welfare Services program (all program funding) and the Safe and Stable program (some of the program’s funding) for each of the five years from FY2012 to FY2016. These discretionary funding authorizations provided in H.R. 2883 (enacted as P.L. 112-34) are equal to the annual amounts *authorized* in each of the previous five fiscal years: \$325 million for Child Welfare Services and \$200 million for the Safe and Stable program. However, as noted by CBO, the amount of actual funding provided is subject to the discretion of Congress as part of the annual appropriations process. Further, the actual discretionary funding appropriated for these programs in FY2011 was considerably less.<sup>39</sup>

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<sup>37</sup> For “Final Results for Roll Call Vote 720” (passage of H.R. 2883), see <http://clerk.house.gov/evs/2011/roll720.xml>.

<sup>38</sup> CBO Cost Estimate, “H.R. 2883 Child and Family Services Improvement and Innovation Act,” as ordered reported by the House Committee on Ways and Means on September 14, 2011, September 19, 2011, <http://www.cbo.gov/ftpdocs/124xx/doc12425/hr2883.pdf>.

<sup>39</sup> Ibid. For program funding history of the Child Welfare Services Program, see Table C-1 in Appendix C of CRS Report R41860, *Child Welfare: Funding for Child and Family Services Authorized Under Title IV-B of the Social Security Act*, by Emilie Stoltzfus. For program funding history of the Safe and Stable Program (showing mandatory and discretionary funds appropriated separately and for all program purposes), see Table D-1 in Appendix D of the same report.

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